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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,896	07/12/2001	Ulrich Rosenbaum	DT-4009	2006

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EXAMINER

TOOMER, CEPHIA D

ART UNIT PAPER NUMBER

1714

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/903,896

Applicant(s)

ROSENBAUM, ULRICH

Examiner

Cephia D. Toomer

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/8/02 has been entered.

This office action is in response to the amendment filed September 8, 2003 in which claims 7-10, and 12-14 were canceled and claims 15-20 were added. It should be noted that claim 29 has been renumbered as claim 20.

The 103(a) rejection of claims 7-10 and 12-14 is withdrawn in view of Applicant canceling the claims.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1714

3. Claims 15-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, and 6 of U.S. Patent No. 6,607,567 (Towfighi) in view of Yu (US 4,844,713).

Towfighi teaches the limitations of the claims with the exception of a fragrance. However, Yu teaches this difference.

Yu teaches fuel compositions containing fragrances in an amount from 0.5-10 parts per 100 parts fuel. Examples of the fragrances includes bayberry, rose and lemon (see col. 2, lines 28-30; Examples 1-3)

It would have been obvious to one of ordinary skill in the art to have added the claimed fragrances to the fuel composition because Yu teaches that fuel gases produce malodorous scents that are masked by the addition of the fragrances.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP1093889 with Towfighi (US 6,607,567) as translation in view of Yu (4,874,713)

Towfighi teaches a propellant gas comprising 40-70 % by weight dimethyl ether, nitrous oxide and/or nitromethane, 8-20% by weight of propylene, methyl acetylene, propane and/or propadiene and 20-45% by weight of isobutane and/or n-butane (see

Art Unit: 1714

abstract). The components and proportions encompass those of the present invention.

See Col. 2, lines 15-35.

Towfighi fails to teach that a fragrance is present in his composition. However, Yu teaches this difference.

Yu teaches fuel compositions containing fragrances in an amount from 0.5-10 parts per 100 parts fuel. Examples of the fragrances include bayberry, rose and lemon (see col.2, lines 28-30; Examples 1-3).

It would have been obvious to one of ordinary skill in the art to add the claimed fragrances to the fuel composition because Yu teaches that fuel gases, such as Towfighi, produce malodorous scents that are masked by the addition of the fragrances.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 703-308-2509. After December 4, 2003, the examiner's telephone number will be 571-272-1126. The examiner can normally be reached on Monday-Friday.

Application/Control Number: 09/903,896
Art Unit: 1714

Page 5

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777 (571-272-1119). The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.


Cepha D. Toomer
Primary Examiner
Art Unit 1714

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